

AMENDED IN SENATE JUNE 24, 2003
AMENDED IN ASSEMBLY MARCH 24, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 305

Introduced by Assembly Member Mullin

February 6, 2003

An act to amend Section 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 305, as amended, Mullin. Density bonuses: child care facilities.

The Planning and Zoning Law requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus or other incentives or concessions for the production of lower income housing units within the development if the developer meets certain requirements.

This bill would also grant an additional density bonus; *or additional* concession; or incentive to a developer of housing that includes a child care facility, *as defined*, as part of his or her proposal, except as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 65915 of the Government Code is amended to read:

65915. (a) When an applicant proposes a housing development within the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this chapter. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) A city, county, or city and county shall either grant a density bonus and at least one of the concessions or incentives identified in subdivision (k), or provide other incentives or concessions of equivalent financial value based upon the land cost per dwelling unit, when the applicant for the housing development agrees or proposes to construct at least any one of the following:

(1) Twenty percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(2) Ten percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(3) Fifty percent of the total dwelling units of a housing development for qualifying residents, as defined in Section 51.3 of the Civil Code.

(4) Twenty percent of the total dwelling units in a condominium project as defined in subdivision (f) of Section 1351 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code.

The city, county, or city and county shall grant the additional concession or incentive required by this subdivision unless the city, county, or city and county makes a written finding, based upon substantial evidence, that the additional concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c). The city, county, or city and county shall grant an additional density bonus, ~~concession, or incentive required by this subdivision~~ or additional concession or incentive identified in

subdivision (k) to an applicant entitled to a density bonus, or any other incentives or concessions pursuant to this section if the applicant includes a child care facility as part of the proposed housing development, unless the city, county, or city and county makes a written finding, based upon substantial evidence, that the existing area has adequate child care facilities.

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all lower income density bonus units for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of the moderate-income units that are directly related to the receipt of the density bonus for 10 years if the housing is in a condominium project as defined in subdivision (f) of Section 1351 of the Civil Code.

(d) An applicant may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of either of the following:

(1) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(2) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California



1 Register of Historical Resources and for which there is no feasible
2 method to satisfactorily mitigate or avoid the specific adverse
3 impact without rendering the development unaffordable to low-
4 and moderate-income households.

5 The applicant may initiate judicial proceedings if the city,
6 county, or city and county refuses to grant a requested density
7 bonus, incentive, or concession. If a court finds that the refusal to
8 grant a requested density bonus, incentive, or concession is in
9 violation of this section, the court shall award the plaintiff
10 reasonable attorney's fees and costs of suit. Nothing in this
11 subdivision shall be interpreted to require a local government to
12 grant an incentive or concession that has a specific, adverse
13 impact, as defined in paragraph (2) of subdivision (d) of Section
14 65589.5, upon health, safety, or the physical environment, and for
15 which there is no feasible method to satisfactorily mitigate or
16 avoid the specific adverse impact. Nothing in this subdivision shall
17 be interpreted to require a local government to grant an incentive
18 or concession that would have an adverse impact on any real
19 property that is listed in the California Register of Historical
20 Resources. The city, county, or city and county shall establish
21 procedures for carrying out this section, that shall include
22 legislative body approval of the means of compliance with this
23 section. The city, county, or city and county shall also establish
24 procedures for waiving or modifying development and zoning
25 standards that would otherwise inhibit the utilization of the density
26 bonus on specific sites. These procedures shall include, but not be
27 limited to, such items as minimum lot size, side yard setbacks, and
28 placement of public works improvements.

29 (e) In no case may a city, county, or city and county apply any
30 development standard that will have the effect of precluding the
31 construction of a development meeting the criteria of subdivision
32 (b) at the densities or with the concessions or incentives permitted
33 by this section. An applicant may submit to a city, county, or city
34 and county a proposal for the waiver or reduction of development
35 standards and may request a meeting with the city, county, or city
36 and county. If a court finds that the refusal to grant a waiver or
37 reduction of development standards is in violation of this section,
38 the court shall award the plaintiff reasonable attorney's fees and
39 costs of suit. Nothing in this subdivision shall be interpreted to
40 require a local government to waive or reduce development

standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) (1) For the purposes of this chapter, except as provided in paragraph (2), “density bonus” means a density increase of at least 25 percent, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units which is equal to 10, 20, or 50 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(2) For the purposes of this chapter, if a development does not meet the requirements of paragraph (1), (2), or (3) of subdivision (b), but the applicant agrees or proposes to construct a condominium project as defined in subdivision (f) of Section 1351 of the Civil Code, in which at least 20 percent of the total dwelling units are reserved for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, a “density bonus” of at least 10 percent shall be granted, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density

1 bonus shall not be interpreted, in and of itself, to require a general
2 plan amendment, local coastal plan amendment, zoning change, or
3 other discretionary approval. The density bonus shall not be
4 included when determining the number of housing units which is
5 equal to 20 percent of the total. The density bonus shall apply to
6 housing developments consisting of five or more dwelling units.

7 (h) “Child care facility,” as used in this section, means a
8 ~~facility operated and maintained under this section for the~~
9 ~~residential care of children as defined under applicable state~~
10 ~~licensing requirements for the facility.~~ *child day care facility other*
11 *than a family day care home, including, but not limited to, infant*
12 *centers, preschools, extended day care facilities, and schoolage*
13 *child care centers.*

14 (i) “Housing development,” as used in this section, means one
15 or more groups of projects for residential units constructed in the
16 planned development of a city, county, or city and county. For the
17 purposes of this section, “housing development” also includes
18 either (1) a project to substantially rehabilitate and convert an
19 existing commercial building to residential use, or (2) the
20 substantial rehabilitation of an existing multifamily dwelling, as
21 defined in subdivision (d) of Section 65863.4, where the result of
22 the rehabilitation would be a net increase in available residential
23 units. For the purpose of calculating a density bonus, the
24 residential units do not have to be based upon individual
25 subdivision maps or parcels. The density bonus shall be permitted
26 in geographic areas of the housing development other than the
27 areas where the units for the lower income households are located.

28 (j) The granting of a concession or incentive shall not be
29 interpreted, in and of itself, to require a general plan amendment,
30 local coastal plan amendment, zoning change, or other
31 discretionary approval. This provision is declaratory of existing
32 law.

33 (k) For the purposes of this chapter, concession or incentive
34 means any of the following:

35 (1) A reduction in site development standards or a modification
36 of zoning code requirements or architectural design requirements
37 that exceed the minimum building standards approved by the
38 California Building Standards Commission as provided in Part 2.5
39 (commencing with Section 18901) of Division 13 of the Health
40 and Safety Code, including, but not limited to, a reduction in

1 setback and square footage requirements and in the ratio of
2 vehicular parking spaces that would otherwise be required.

3 (2) Approval of mixed use zoning in conjunction with the
4 housing project if commercial, office, industrial, or other land uses
5 will reduce the cost of the housing development and if the
6 commercial, office, industrial, or other land uses are compatible
7 with the housing project and the existing or planned development
8 in the area where the proposed housing project will be located.

9 (3) Other regulatory incentives or concessions proposed by the
10 developer or the city, county, or city and county that result in
11 identifiable and actual cost reductions.

12 This subdivision does not limit or require the provision of direct
13 financial incentives for the housing development, including the
14 provision of publicly owned land, by the city, county, or city and
15 county, or the waiver of fees or dedication requirements.

16 (l) If an applicant agrees to construct both 20 percent of the total
17 units for lower income households and 10 percent of the total units
18 for very low income households, the developer is entitled to only
19 one density bonus and at least one additional concession or
20 incentive identified in Section 65913.4 under this section although
21 the city, county, or city and county may, at its discretion, grant
22 more than one density bonus.

23 (m) Nothing in this section shall be construed to supersede or
24 in any way alter or lessen the effect or application of the California
25 Coastal Act (Division 20 (commencing with Section 30000) of the
26 Public Resources Code).

27 (n) A local agency may charge a fee to reimburse it for costs it
28 incurs as a result of amendments to this section enacted during the
29 2001–02 Regular Session of the Legislature.

30 (o) For purposes of this section, the following definitions shall
31 apply:

32 (1) “Development standard” means any ordinance, general
33 plan element, specific plan, charter amendment, or other local
34 condition, law, policy, resolution, or regulation.

35 (2) “Maximum allowable residential density” means the
36 density allowed under the zoning ordinance, or if a range of
37 density is permitted, means the maximum allowable density for
38 the specific zoning range applicable to the project.

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